

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON LEE NORRIS,

Defendant-Appellant.

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UNPUBLISHED

May 29, 2003

No. 237512

Jackson Circuit Court

LC No. 01-002272-FC

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of assault with intent to do great bodily harm, MCL 750.84, and possession of a firearm in the commission of a felony, MCL 750.227B. Defendant was sentenced as a second habitual offender, MCL 769.11, to 7 to 15 years' imprisonment for assault, and 2 years' imprisonment, to be served consecutively, for felony-firearm. We affirm.

**I. FACTS**

The victim, Tekosha Robinson, testified that she and defendant had been in an off-and-on relationship since September 1998. On March 29, 2001, defendant and Robinson had an argument. Defendant came home later that night and he and Robinson began to argue again. Robinson testified that defendant pushed her onto the bed. She got off the bed and reached for the doorknob, but he grabbed her. He held both her arms with his left forearm. Defendant then said, "You want me to show you something. I'm going to jail". Robinson then felt a thump in the back of her head and realized she had been shot. According to a witness, as defendant helped Robinson down the stairs, he said, "Oh my God, Tekosha, I shot you."

According to defendant, however, he turned to the closet and when he turned back around, Robinson was pointing a gun at him. He claimed he first tried to talk her into putting the gun down, but then he lunged for the gun and it went off. When cross-examined by the prosecution, defendant could not recall how he and Robinson were positioned while they struggled for the gun.

Before trial, the prosecution sought to admit the testimony of defendant's ex-wife, Angela Snyder, regarding a similar incident with a gun to show defendant's intent and absence of accident. The trial court found that the incident was substantially similar and could be admitted

to show motive, opportunity, and scheme. Defendant filed an interlocutory appeal, which this Court denied.

Snyder testified that in September 1999, after she and defendant had divorced, defendant picked her up and drove to the country. Snyder testified that she and defendant discussed his impending move and whether she was seeing anybody (she told defendant she was not). He eventually took her back to her car. She drove to a male friend's house. Defendant showed up at the friend's house, grabbed Snyder by the hair, threw her to the ground, then down the stairs, then into the side of her car. She then drove with defendant back to the country, while he hit her several times and called her names. Defendant then drove to a friend's house and came back with a case. He asked her if she wanted to see what it was, pointed a gun at her, and threatened to shoot her. Afterward, he offered to take her to the hospital. Snyder testified that she never contacted the police about the incident because she was too afraid of defendant. After Snyder testified on direct examination, the trial court gave a limiting instruction to the jury – Snyder's testimony was offered for the limited purpose of showing defendant used a similar plan or scheme.<sup>1</sup>

On rebuttal, the prosecution requested to present evidence of a prior incident between defendant and Robinson where defendant was abusive and said, "This is going to send me to the penitentiary." The prior incident happened November 1, 2000. The trial court allowed the testimony. The prosecution also proposed to introduce rebuttal testimony of Snyder that defendant threatened to wrap Snyder and himself around a tree. The trial court ruled it would only allow this rebuttal testimony if the incident happened after 1997. The trial court's reasons for ruling out earlier acts of testimony was that it was too distant in time, too prejudicial, and had no probative value.

Robinson testified on rebuttal about an earlier incident where defendant arrived at her house, found her sitting on the couch next to a male friend, and began punching the friend. Defendant then began punching Robinson and throwing her around. Defendant said, "If I am going to the penitentiary, I'm goin' for somethin'," and smashed a mirror over their heads. The trial court instructed the jury about evidence being offered for the limited purpose of attacking credibility. The trial court also instructed the jury about evidence being offered for the limited purpose of showing defendant used a plan, scheme, or characteristic scheme.

## II. STANDARD OF REVIEW

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<sup>1</sup> Although the trial court indicated the evidence was admissible to show motive, plan or scheme, when the court gave the limiting instruction, it only mentioned plan or scheme. However, defendant did not object to the limiting instruction. Moreover, because, in this author's view, the trial court correctly admitted the other-acts evidence for the proper purpose of showing defendant's motive (and the evidence was actually admitted to show defendant's intent), there was no error. Although the limiting instruction should have included language regarding motive and intent, defendant has not challenged the limiting instruction on appeal, and his failure to object in the trial court would preclude review other than for plain error. *People v Carines*, 460 Mich 750, 761-763; 597 NW2d 130, reh den 461 Mich 1205 (1999). Finally, whether a limiting instruction is given is not a factor in determining whether the trial court correctly decided to admit the other-acts evidence in the first place.

This Court reviews for an abuse of discretion of a trial court's decision to admit evidence of prior acts. *People v Sabin (On Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). Before other-acts evidence may be introduced pursuant to MRE 404(b), the prosecution must satisfy a three-part test: (a) there must be a reason other than character or propensity for its admission, (b) it must be relevant, and (c) the danger of undue prejudice cannot substantially outweigh its probative value. *Sabin, supra* at 55-56.

### III. ANALYSIS

#### A. Other Acts Evidence

Defendant first argues that the trial court abused its discretion by admitting his ex-wife's testimony as other-acts of evidence against him. Defendant claims the prosecution's only purpose in admitting the evidence was to show defendant's bad character. We disagree.

In the case at hand, the prosecution stated proper reasons for introducing the incident between defendant and his ex-wife – motive and intent. However, the prosecution cannot mechanically recite intent as its purpose without explaining how the evidence is relevant. *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998). Evidence is relevant when it has a tendency to make a material fact more or less probable. *Sabin, supra*, 463 Mich at 60. Relevance involves two elements, materiality and probative value. *Crawford, supra*, 458 Mich at 388. Materiality refers to whether the fact was truly at issue. *Id.* at 388.

At the time of the hearing on the prosecution's motion to introduce other-acts evidence, there was some indication that defendant's intent would be at issue. Defendant was bound over on the charge of assault with intent to murder, MCL 750.83, a specific intent crime. *People v Smith*, 119 Mich App 91, 93; 326 NW2d 434 (1982). A plea of not guilty – as here – requires the prosecution to prove every element of the offense. *People v Eddington*, 387 Mich 551, 562; 198 NW2d 297 (1972). Therefore, intent was at issue when the trial court permitted defendant's ex-wife to testify.

Motive is the reason for doing an act and is relevant to show criminal intent. *Sabin, supra* at 68. In the instant case, the prosecution argued that defendant's jealousy and need to control the women in his life were the motives for his actions. The prosecution also contended the ex-wife's testimony made the existence of defendant's intent to murder more probable and an accident less probable. *People v VanderVliet*, 444 Mich 52, 80; 508 NW2d 114 (1993). Where other-acts evidence is offered to show intent, the acts must only be of the same general category to be relevant. *Id.* While defendant did not shoot his ex-wife, he threatened to do so under circumstances similar to the case at hand; therefore the testimony was relevant.

Relevant evidence is admissible unless the danger of unfair prejudice substantially outweighs its probative value. MRE 403. Unfair prejudice exists when there is a tendency that the evidence will be given too much weight by the jury. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). In light of the other evidence presented by the prosecution, any unfair prejudice caused by defendant's ex-wife's testimony was minimal. Therefore, the trial court properly acted within its discretion when it permitted defendant's ex-wife to testify. Moreover, the trial court limited any prejudice when it instructed the jury that the testimony was offered for

only a limited purpose. After closing arguments, the trial court again instructed the jury about evidence being offered for a limited purpose.

#### B. Admission of Other Acts on Rebuttal

Defendant next argues that the trial court also abused its discretion by admitting the victim's testimony regarding other acts on rebuttal. We disagree.

The prosecution proposed to introduce a previous incident between defendant and the victim to show intent or absence of accident to rebut defendant's claim that the gun fired accidentally. This is a proper purpose under MRE 404b(1), and it did not involve inadmissible character or propensity evidence. Furthermore, intent was at issue – whether defendant shot the victim intentionally, not accidentally as he claimed. Therefore, her testimony regarding the previous incident was material to defendant's intent. *Crawford, supra* at 388.

The prosecution contended that the previous incident – with the same victim, the same defendant, an intentional assault, and similar statements by defendant about going to prison – made the accidental discharge of the gun in the instant case less probable. *Crawford, supra* at 388-390. We agree. *VanderVliet, supra* at 79. While defendant did not have a gun in the previous incident, he did assault the victim, and he made a similar statement about how this could result in jail.

The trial court acted within its discretion when it determined that the prejudicial effect of the evidence did not substantially outweigh its probative value. Therefore, the trial court properly admitted the evidence on rebuttal. *Sabin, supra* at 67. Furthermore, after closing arguments, the trial court properly instructed the jury regarding the evidence's limited purpose.

Affirmed.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Bill Schuette